

REMARKS

No claims having been canceled or added, the Applicant contends that claims 1-19 remain pending and properly under consideration in this application.

Restriction Requirement

The Examiner has requested an election under 35 U.S.C. §§ 121 and 372 among various inventions identified in the originally filed claims of the application, the claim groups and inventions being identified as:

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| Group I | Claims 1-10 and 16-18, drawn to a method for PCR amplification and detection of nucleotides; and |
| Group II | Claims 11-15 and 19, drawn to a device comprising a biochip. |

Applicants' Election

In response to this Restriction Requirement, the Applicants elect, with traverse, the invention of claims 1-10 and 16-18 (the Group I claims) drawn to a method for PCR amplification and detection of nucleotides.

Arguments in Support of Traverse

The Applicants submit that particular structure of the claimed device and the method practiced using the claimed device are so intimately related that a search for art relevant to one group of claims, *e.g.*, those directed to the method, will necessarily find art pertinent to the other

invention, *e.g.*, those directed to the device. Accordingly, the Applicants contend that no serious burden would result from examining all of the pending claims in a single application.

The Applicants further note that, as provided in MPEP § 803, a restriction is proper only when the Examiner has established *both* (A) that the inventions are independent or distinct as claimed; *and* (B) there would be a serious burden on the examiner if restriction is not required. The Applicants contend that the argument presented in the Action appears to present a rather convoluted argument regarding the independence of the inventions predicated on the application of a single “X” reference. The Applicants note that other of the cited references are clearly applied to both the method and device claims, thereby demonstrating the overlapping and interrelated nature of the method and device. The Applicants maintain, therefore, that the pending Action has failed to establish the predicate conditions for properly imposing a restriction requirement on the pending claims.

The Applicants request, therefore, that the Restriction Requirement be reconsidered and withdrawn.

CONCLUSION

In view of the above elections, the Applicant submits that the present application is in condition for allowance. A notice to that effect is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

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